

LAW OFFICES
WOLF POPPER LLP
845 THIRD AVENUE
NEW YORK, N.Y. 10022-6601

USDC SDNY
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FACSIMILE: (212) 486-2093
WWW.WOLFPOPPER.COM

(212) 759-4600

DIRECT DIAL: (212) 451-9606


April 6, 2017

Application GRANTED. By April 10, 2017, at 12:00 P.M., Plaintiff must identify in writing and serve on Defendant any statements he intends to claim are defamatory at trial.

By ECF

Dated: April 7, 2017
New York, New York

The Honorable Lorna G. Schofield
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

Re: Shah v. Levy, 13-cv-02975-LGS-SN

Dear Judge Schofield,

We are co-counsel for defendant in the above-referenced action. The trial in this matter is scheduled to begin on April 24, 2017. As defendant set forth in his March 17, 2017 Pre-Trial Memorandum (ECF No. 263), plaintiff has continually failed to specify which statements in the e-mails he claims are defamatory.

Plaintiff has argued in his Response to Defendant's Pre-Trial Memorandum (ECF No. 264) that "the jury should not be instructed that any statements made by [defendant] are non-actionable opinion." Similarly, in the parties' joint Proposed Jury Instructions (ECF No. 260), plaintiff argued that the jury should not be instructed that statements of opinion cannot be considered in determining liability for defamation because the issue of "[w]hether an alleged defamatory statement is one of opinion or fact is a question of law for the Court," and "[t]his Court has made no ruling as to whether any of [d]efendant's statements constitute non-actionable opinion."

As plaintiff has refused to specify which statements contained in the emails he claims are defamatory, neither defendant nor this Court can determine which statements among those are non-actionable opinion. The same is true for defendant's defenses of truth and hyperbole.

At the time defendant filed his Pre-Trial Memorandum, the Pre-Trial Conference in this matter was scheduled for April 5, 2017. That left enough time for this issue to be resolved at the Pre-Trial Conference before trial. However, the Pre-Trial Conference has since been moved to

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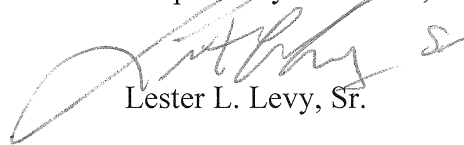
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April 18, 2017, less than a week before trial, making necessary this letter motion for an order directing plaintiff to specify which statements in the e-mails he claims are defamatory. We have reached out to plaintiff's counsel several times in an attempt to resolve this issue without Court intervention, but such efforts have been unsuccessful.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Lester L. Levy, Sr.", is written over the typed name.

Lester L. Levy, Sr.

cc: Counsel of Record